

119 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket Nos. ER91-505-007
EL92-18-004

ORDER ON COMPLIANCE FILING

(Issued April 6, 2007)

1. Pacific Gas and Electric Company (PG&E) filed revised rate sheets to a rate schedule between PG&E and Transmission Agency of Northern California (TANC). Specifically, PG&E filed “Supplements to the Principles for Telsa-Midway Transmission Service” (the rate schedule itself is referred to as the SOTP or South of Telsa Principles) under which transmission service is provided to TANC by PG&E. PG&E states that this compliance filing reflects the findings of various orders issued by the Commission. This order clarifies our prior findings with respect to the transmission agreement at issue, and directs PG&E to revise the rate sheets at issue in these proceedings.

Background

2. PG&E states that it entered into the SOTP with TANC in 1989. The SOTP provides the framework for developing a transmission service agreement under which PG&E agreed to provide 300 MW of firm transmission service to TANC between PG&E’s Telsa substation and its Midway substation. By order dated June 12, 1991, the Commission ordered PG&E to file the SOTP.¹ The just and reasonableness of the SOTP was set for hearing in Docket No. ER91-505-000.

3. On March 1, 1992, PG&E began providing transmission service under the SOTP. On July 12, 1992, PG&E and TANC submitted proposed supplements to the SOTP. These supplements addressed additional terms and conditions which were proposed to be included in a successor definitive transmission agreement. In November 1998, the

¹ See *Transmission Agency of Northern California v. Pacific Gas and Electric Company, and Pacific Gas and Electric Company*, Docket Nos. EL91-8-000, ER91-344-000, 55 FERC ¶ 61,417, *order on reh’g*, 56 FERC ¶ 61,325 (1991).

Commission issued Opinion No. 431,² in which the Commission addressed a number of contested terms and conditions and a finding that, under the SOTP, member-to-member transmission service was not permitted. On March 16, 2001, the Commission denied rehearing of Opinion No. 431 (March 2001 Order).³

4. The March 2001 Order required PG&E to make a compliance filing by April 15, 2001 to reflect the findings therein. PG&E requested extensions of the compliance filing due date, and made its compliance filing on October 12, 2001. PG&E's compliance filing consists of thirty revised rate schedule sheets.⁴ PG&E states that these rate sheets are intended to comply with Commission orders issued in these proceedings.

Notice, Interventions and Response

5. Notice of this compliance filing was published in the *Federal Register*, 66 Fed. Reg. 68,900 (2001) with motions to intervene and protests due on or before November 2, 2001.

6. Comments and protests were filed separately by TANC and Northern California Power Agency (NCPA). TANC protests: (1) PG&E's use of the term "South of Telsa Supplements"(SOT Supplements) in lieu of earlier references to the Midway-Telsa Rate Schedule (MTRS or SOTP) and argues that the revised compliance rate schedule provisions should apply to both the South of Telsa Supplements and the SOTP; and (2) PG&E's proposed definition of control area agreement that appears to relieve PG&E of all obligation to provide ancillary services in all of its individual control area agreements, which is inconsistent with the terms of some of the individual agreements. NCPA echoes TANC's concerns regarding the definition of control area agreement.

Discussion

7. First, we note that PG&E states that the instant compliance filing reflects revisions to the rate sheets that were suggested by TANC as a result of joint review by PG&E and TANC of PG&E's initially drafted rate sheets. Thus, the parties attempted to narrow any differences regarding the instant rate sheets prior to submission with the Commission. As a result, TANC and NCPA, as previously noted, have taken issue with only two provisions included in these rate sheets. Accordingly, we have first reviewed the compliance rate sheets regarding those findings that are uncontested. Our review of the revised rate sheets regarding the uncontested compliance issues indicates that the instant

² See *Pacific Gas and Electric Company*, 85 FERC ¶ 61,180 (1998) (Opinion No. 431).

³ See *Pacific Gas and Electric Company*, 94 FERC ¶ 61,307 (2001).

⁴ Designated as Original Sheet No. 48 through Original Sheet No. 77.

rate sheets comply with the Commission's orders previously issued in these proceedings. As such, the uncontested revised rate sheets are accepted for filing effective April 14, 2001, consistent with the effective date established in our earlier orders.

8. With respect to the two contested issues, we first address the issue of whether the findings directed modifications to both the SOTP and the SOT Supplements or solely to the SOT Supplements. Specifically, TANC argues that the original proposed Supplements were styled as the "Midway Transmission Rate Schedule" or "MTRS" and that the MTRS was defined as consisting of: (1) the SOTP and (2) the Supplements to the Principles. As such, TANC argues that PG&E's rate sheets that replace the terms "Midway Transmission Rate Schedule" and "MTRS" with "these SOT Supplements" may result in the creation of separate and possibly conflicting rights or obligations under the two documents. Accordingly, TANC requests that PG&E be directed to use the term "the Principles and these SOT Supplements" in each instance to avoid such problems.

9. Our review of the record in these proceedings indicates that the presiding ALJ, in his Initial Decision,⁵ as affirmed by the Commission, determined that the SOT Supplements were intended to supplement the SOTP Principles. Specifically, the ALJ rejected PG&E's proposal that the SOT Supplements supersede the SOTP Principles.⁶ The ALJ noted that to adopt the term "supersede" would suggest that we are adopting a replacement to the SOTP, rather than a supplement to it. The ALJ concluded that "...[c]onsequently, except where, in this proceeding, the Commission specifically adopts positions contrary to what was agreed to in the SOTP, it is intended that the SOTP continue to govern the transmission service and that the supplements merely fill in the gaps."⁷ As such, PG&E's compliance filing reflects, in section E.3 of the Supplements, specific language drafted by the presiding ALJ to implement this finding. Accordingly, we find that the protesters' concerns regarding the possible creation of two separate and conflicting rights and obligations under the SOTP Principles and SOT Supplements are without merit. In the event of a conflict between the SOT Supplements and SOTP Principles, it is clear that the SOTP Principles prevail. Accordingly, we conclude that PG&E's proposed compliance rate sheets that reflect the use of the term "SOT Supplements" are acceptable.

10. In Appendix A, Supplemental Definitions, A.2, Control Area Agreement, PG&E includes new provisions that: (1) relieve PG&E of its obligation to provide ancillary services to meet Control Area Requirements, (2) require TANC members to provide or obtain reserves to meet control area requirements and provide or obtain equivalent load

⁵ *Pacific Gas & Electric Company*, 67 FERC ¶ 63,009 (1994).

⁶ *Id.* at 65,065-66.

⁷ *Id.* at 65,066.

following and reserve services from the Control Area operator or from another entity that has an arrangement with the control area operator, and (3) provide that TANC member agreements with third party control area operators, including entities not under the jurisdiction of FERC, may also meet the control area requirements under this section. Protesters question whether items (1) and (2) of PG&E's proposed control area agreement definitions are reasonable. Our review of these items finds that they are not consistent with the findings of the Commission's orders in these proceedings.

11. In the Initial Decision, the presiding ALJ noted that TANC objected to PG&E's proposal that TANC members be required to enter into a control area agreement with PG&E before they can take service under the SOTP. The ALJ concluded that this provision was reasonable and consistent with particular sections of the SOTP, and that, under this requirement, the interconnection agreements currently in force between PG&E and all the individual TANC members, except for the City of Redding, would suffice for their control area agreements.⁸ The presiding ALJ also concluded that the interconnection agreement between Redding and Western Area Power Administration would also satisfy such requirements.⁹ Accordingly, the ALJ found that such findings should be incorporated into section A.2, Control Area Agreement, of the SOTP Supplements.

12. The Commission, in affirming the ALJ on this issue, found that PG&E's revised control area agreement requirement, which permits control area agreements between TANC members and third parties, was a just and reasonable supplement to the SOTP.¹⁰ No rehearings were sought on this control area agreement issue. Accordingly, we find that PG&E's proposal to include TANC member agreements with third party control area operators is consistent with the Commission's findings.

13. However, PG&E's inclusion of language that relieves it of the obligation to provide ancillary services to meet control area requirements were not specifically required by the Commission as part of the ordered compliance filing. As such, we find that these requirements are inconsistent with the Commission's findings, and are hereby rejected. Finally, for the same reasons, the term "or obtain," which is also included as an addition to A.2(2), should also be deleted as beyond the scope of a compliance filing. Thus, we do not need to address TANC's and NCPA's contentions that the current interconnection agreements between PG&E and its individual TANC members require PG&E, under certain conditions, to provide ancillary services. PG&E is directed to file revised tariff sheets on these provisions within 30 days of the date of this order.

⁸ *Id.* at 65,062.

⁹ *Id.*

¹⁰ Opinion No. 431 at 61,723.

The Commission orders:

(A) PG&E's uncontested revised rate sheets are accepted for filing effective April 14, 2001, as discussed in the body of this order.

(B) PG&E is directed to file, within 30 days of the date of this order, revised rate sheets, Original Sheet Nos. 50 and 51, as discussed in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.